

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**JOHN A. SCHMIDT, MASTER COMMISSIONER (FORMER)
BULLITT COUNTY, KENTUCKY**

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER**

I. INTRODUCTION

The Judicial Conduct Commission of the Commonwealth of Kentucky (the “Commission”) is vested with the authority to initiate, hear and decide charges of official misconduct by any judge or other office of the Court of Justice performing judicial functions, which includes master commissioners,¹ and upon a finding of such official misconduct, to impose sanctions pursuant to SCR 4.020. In furtherance of this authority, the Commission filed charges of judicial misconduct against John A. Schmidt, former Master Commissioner of Bullitt County, Kentucky (“Respondent”) on August 18, 2020.

II. PROCEEDINGS

1. The Respondent, John A. Schmidt, is the former Master Commissioner of Bullitt County, Kentucky.

2. Notice of preliminary investigation was issued on March 30, 2020.²

¹ See SCR 4.300, *Application*, paragraph I(B): “A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including a judicial officer as provided in Parts II through IV of this section, such as a court commissioner.” KRS Chapter 31A.010, et seq., authorizes the appointment of master commissioners and special commissioners in judicial circuits to “perform such functions, including those of a receiver, as may be directed by an appropriate order of the court.” Pursuant to KRS 425.006, master commissioners and special commissioners are appointed judicial officers to perform such duties as may be required of them by KRS Chapter 425 of the Kentucky Revised Statutes.

² See SCR 4.025, *Authority of commission in certain situations*, paragraph 3: “For any violation other than a campaign violation, the authority of the Commission to take action against a judge who has left office shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued within 180 days after the date the judge leaves office. Mr. Schmidt was relieved from his position on December 10, 2019.

3. A Notice of Formal Proceedings and Charges consisting of Counts I through III was filed against the Respondent on August 18, 2020, under SCR 4.180. Counsel for the Respondent filed an Answer to the Charges on September 21, 2020. Respondent did not respond to Count I, claimed that he did not violate Count II because his duties as Master Commissioner did not include reviewing and settling the accounts of a personal representative, and admitted in response to Count III that he did not timely collect and disburse judicial sale proceeds, but claimed “there was no pattern or institutional issue concerning the timeliness of the collection and dispersal [sic] of such proceeds.” In addition, the Respondent noted in his Answer that the Bullitt Circuit Court removed him as Master Commissioner in late 2019.

4. On December 7, 2020, the Commission entered an Order and Notice of Time and Place for Hearing, scheduling a hearing for February 12, 2021. By Order entered January 8, 2021, the Commission continued the hearing to June 25, 2021, and extended the time for making final disposition.

5. The hearing of these Charges took place on June 25, 2021, in the Courtroom of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky. The Commission was represented by Hon. Jeffrey C. Mando. The Respondent was not present, but was represented at the hearing by Hon. Peter L. Ostermiller.

6. The Commission presented its evidence, and counsel for the Respondent did not present any independent evidence beyond referral to the statements contained in the Answer filed on behalf of the Respondent and introduced into evidence an order from the Kentucky Bar Association dated November 20, 2020, regarding Respondent’s member status. After closing arguments by both counsel, the Commission then deliberated on the Charges and the evidence presented at the hearing.

7. The five voting members of the Commission on this case are as follows: Bar Member R. Michael Sullivan, Court of Appeals Member Jeff S. Taylor, Circuit Judge Member Eddy Coleman, District Judge Member David Bowles, and Citizen Member Janet L. Lively. Also, in attendance during the hearing were alternate Court of Appeals Member Judge Glenn E. Acree, alternate District Judge Member Karen Thomas, and alternate KBA member Carroll M. Redford, III. Citizen Member Dr. Joe E. Ellis and alternate Circuit Judge Member Mitch Perry did not participate in the proceedings.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following Findings of Fact and Conclusions of Law based upon the clear and convincing evidence presented at the hearing.

COUNT I

Count I charged that in May 2019, while serving as Master Commissioner of Bullitt County, Respondent misappropriated \$81,000.00 in proceeds from a property sale in *Specialized Loan Servicing, LLC v. Noah E. Blunk (Deceased)*, Bullitt County Circuit Court Case No. 18-CI-00668.³ More specifically, on May 7, 2019, Respondent received a \$10,000.00 official bank check and a \$71,000.00 personal check for purchase of the property. Instead of depositing the funds into his Master Commissioner escrow account, Respondent altered the endorsement stamp on each check and directed the funds to be deposited to an account which is not affiliated with the Bullitt County Master Commissioner's Office.

By a vote of 5-0, the Commission finds with respect to Count I that the Respondent committed the acts set forth above, that these acts violate SCR 4.020(1)(b)(i) and constitute misconduct in office, and that these acts also violate SCR 4.300 and the following Canons of the

³ The sale of real property was conducted pursuant to Judgment and Order of Sale entered April 9, 2019.

Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires judicial officers to comply with the law.
- Canon 1, Rule 1.2, which requires judicial officers to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- Canon 2, Rule 2.5, which requires judicial officers to perform judicial and administrative duties competently and diligently.

COUNT II

Count II charged that during Respondent's service as Master Commissioner, Respondent impermissibly acted as Public Administrator in a number of cases in Bullitt County in violation of KRS 395.040(3), which prohibits any Master Commission or other Commissioner whose duty it is to settle the accounts of a personal representative from simultaneously acting as Public Administrator.

By a vote of 5-0, the Commission finds with respect to Count II that it was not proven by clear and convincing evidence that the Respondent violated KRS 395.040(3).

COUNT III

Count III charged that during Respondent's service as Master Commissioner, Respondent routinely failed to collect and disburse the proceeds of judicial sales in a timely manner. More specifically, in every report from the AOC Division of Judicial Audits from 2013 through 2020, Respondent was found to have repeatedly failed to collect judicial sale proceeds. In the most recent report dated February 12, 2021, the Auditor performed a detailed review⁴ of all cases referred for sale in 2018 and 2019, comparing sale activity to financial activity through the

⁴ Pursuant to the Rules of Administrative Procedure, AP Part IV, Section 11, the accounts of the master commissioner shall be subject to periodic audits, but no less than annual audits, by the Administrative Office of the Courts. In addition, KRS 31A.010 requires the master commissioner to provide to the Administrative Office of the Courts a complete accounting for all amounts received and distributed and for all fees collected.

Respondent's office's former escrow account. The Auditor identified over twenty-four cases with sale activity from March 20, 2018 through December 10, 2019 that failed to contain corresponding deposits of funds to cover costs, fees and expenses of the scheduled sales, in violation of the Rules of Administrative Procedure, AP Part IV, Section 5(4).

By a vote of 5-0, the Commission finds with respect to Count III that the Respondent committed the acts set forth above, that these acts of Respondent violated SCR 4.020(1)(b)(i) and constitute misconduct in office, and that these acts violate SCR 4.300 and the following Canons of the Code of Judicial Conduct:

- Canon 1, Rule 1.1, which requires judicial officers to comply with the law.
- Canon 1, Rule 1.2, which requires judicial officers to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- Canon 2, Rule 2.5, which requires judicial officers to perform judicial and administrative duties competently and diligently.

ORDER

Respondent has been found guilty of violating the Kentucky Code of Judicial Conduct and engaging in misconduct in two of the three counts charged against Respondent. In engaging in the conduct set forth in Count I, Respondent misappropriated \$81,000.00 in funds from a judicial sale, failing to deposit the funds in his Master Commissioner's account. Because Respondent has already been removed from his position as Master Commissioner by the Bullitt Circuit Court, a public reprimand is the most severe sanction the Commission can impose.⁵

⁵ The Commission believes it is important to acknowledge the holding of the Kentucky Supreme Court in *Maze v. Jud. Conduct Comm'n*, 612 S.W.3d 793, 810–11 (Ky. 2020), in which the Court ruled, “SCR 4.020 and 4.025 clearly establish that the Commission has available the sanction of ‘removal’ notwithstanding a judge’s separation from office [by retirement or resignation]” because “it would be incredible that a judge could commit serious crimes and still retain a substantial retirement benefit.[fn. omitted] A better policy, as expressed in SCR 4.020 and 4.025, is that a judge’s separation from office prior to the Commission’s hearing has no bearing on the Commission’s available range of sanctions, up to and including removal. Adhering to this rule promotes justice and public confidence in the judiciary and incentivizes judges to comply with the law.” The Commission also notes that the Respondent is not a

Based upon the foregoing conduct, the Respondent is hereby publicly reprimanded.

The violations in this case are more serious than reflected in the limited penalty of a public reprimand, especially those set forth in Count I. If Respondent had not been removed from office by the Bullitt Circuit Court, the Commission would remove him from office. Canon 1, Rules 1.1 and 1.2, requires judges and those performing judicial functions like Respondent to maintain high standards of conduct to comply with the law, including the Code of Judicial Conduct, to uphold the integrity of the judiciary, and to avoid impropriety. Misappropriation of funds related to a judicial sale is a very serious offense, and this conduct was a significant violation of public trust placed in the judiciary to competently and diligently perform its functions with integrity. In addition, Respondent's failure to collect and disburse costs of sale in numerous cases is a substantial dereliction of duty.

Rule 4.270 provides that the Commission's Order shall become effective within ten days after service, unless an appeal is filed within that time.

I hereby certify that the Findings of Fact, Conclusions of Law, and Final Order represent an action of the Judicial Conduct Commission on this 13th day of July, 2021.

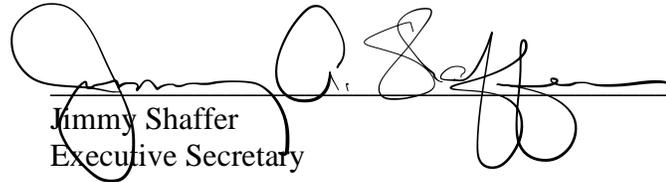


R. Michael Sullivan
Chair of the Commission

member of the Judicial Retirement System. KRS 21.350.

CERTIFICATE OF SERVICE

I hereby certify that copy hereof was served on John A. Schmidt, by serving the same to his attorney, Peter L. Ostermiller, 1303 Clear Springs Trace, Suite 100, Louisville, Kentucky, 40223; and on counsel for Judicial Conduct Commission, Jeffrey C. Mando, 40 West Pike Street, Covington, KY 41011, this 13th day of July, 2021.



Jimmy Shaffer
Executive Secretary